

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

In re: Mortgage Foreclosure Cases	) ) ) ) )	Misc. No. 11-mc-88-M-LDA
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**PLAINTIFFS' EMERGENCY MOTION FOR ORDER BARRING DEFENDANTS  
FROM FILING BRIEF OUT OF TIME**

Now comes Plaintiffs and move this Honorable Court to enter an Order barring Defendants from filing brief out of time. As reasons therefor, Plaintiffs state as follows:

1. This Court entered an Order on June 19, 2013 allowing Defendants until June 26, 2013 to file their brief addressing why this Court should not reject the Report and Recommendations of the Magistrate Judge in light of the First Circuit's recent decision in Culhane v. Aurora Loan Servs. of Neb., 708 F.3d 282 (1<sup>st</sup>. Cir. 2013). A copy of said Order is attached hereto as Exhibit A.
2. Pursuant to said Order, this Court allowed Plaintiffs until June 26, 2013 to file their brief addressing whether the Court's stay of litigation meets the requirements for the issuance of a preliminary injunction.
3. On June 26, 2013, this Court entered a Text Order allowing both parties until June 27, 2013 to file the above mentioned briefs. A copy of said Text Order is attached hereto as Exhibit B.
4. As of the time of the writing of this Motion, June 28, 2013, Defendants had not filed the brief referenced in this Court's Order.

5. As of the time of the filing of this Motion, June 28, 2013, Plaintiffs complied with said Order and filed their brief on June 26, 2013, which has been marked in the case docket as Document #2172.
6. By not complying with this Court's Order, Defendants have received an unfair advantage and have unduly prejudiced the Plaintiffs in that Defendants have received an extra day to respond to Plaintiffs' brief and Plaintiffs have been denied the allotted time granted by this Court to respond to Defendants brief.

Wherefore, Plaintiffs pray this Honorable Court grant Plaintiffs' Emergency Motion Barring Defendants from Filing Brief out of Time.

Respectfully submitted,  
Plaintiffs on docket represented by:

/s/ George E. Babcock  
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/s/ Corey J. Allard  
Corey J. Allard, Esquire (#3747)  
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June 28, 2013

**CERTIFICATION OF SERVICE**

I hereby certify that on June 28, 2013, a copy of the foregoing document was filed via the Court's ECF filing system and that a copy of the same will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants and was e-mailed to Barbara Barletta, Docket Clerk of the Federal District Court at [Barbara\\_Barletta@rid.uscourts.gov](mailto:Barbara_Barletta@rid.uscourts.gov).

/s/ George E. Babcock, Esq.

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# EXHIBIT A

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

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In re: Mortgage Foreclosure Cases  
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Misc. No. 11-mc-88-M-LDA

**ORDER**

The First Circuit issued a decision on June 14, 2013 because of an interlocutory appeal and application for a writ of mandamus brought by “certain defendants” in some cases on the Mortgage Foreclosure Docket established by this Court in 2011.

The Court of Appeals instructed this Court on remand to hold a hearing expeditiously pursuant to Fed R. Civ. P. 65(a)(1) on the issue of whether the Court’s stay of litigation - which the First Circuit found to be an injunction - meets the requirements for the issuance of an injunction. In compliance with the First Circuit’s decision, this Court invites briefs on the issue of whether the Plaintiffs have established: “that (1) [they] ha[ve] a substantial likelihood of success on the merits, (2) there exists, absent the injunction, a significant risk of irreparable harm, (3) the balance of hardships tilts in [their] favor, and (4) granting the injunction will not negatively affect the public interest.” *TEC Eng’g Corp. v. Budget Molders Supply, Inc.*, 82 F.3d 542, 544 (1st Cir. 1996). Any Plaintiff wishing to file a written submission on this issue shall do so no later than June 26, 2013.<sup>1</sup> Any Defendant wishing to file a written submission on this issue

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<sup>1</sup> The submissions should be captioned in the *In re Mortgage Foreclosure Case*, No 11-mc-88. The parties shall file their submission by sending it via e-mail to this Court’s Docket Clerk, Ms. Barbara Barletta at [Barbara\\_Barletta@rid.uscourts.gov](mailto:Barbara_Barletta@rid.uscourts.gov). Ms. Barletta will docket the submissions and serve via e-mail all of the counsel.

shall do so by July 3, 2013. The Court will hold a hearing pursuant to Rule 65(a)(1) on this issue on **Monday July 8, 2013 at 9 AM in Courtroom 3.**

On the issue of standing raised in the First Circuit decision, the Defendants in the case of *Cosajay v. MERS*, C.A. No. 10-442 shall show cause why the Report and Recommendation from the Magistrate Judge (ECF No. 21) should not be rejected and the Defendants' Motion to Dismiss (ECF No. 5) denied in light of the First Circuit's recent decision in *Culhane v. Aurora Loan Servs. of Neb.*, 708 F.3d 282 (1st Cir. 2013). Defendants shall file their brief no later than June 26, 2013. The Plaintiff shall file her response no later than July 3, 2013.

On the issue of the mandatory mediation by the Special Master, the parties are invited to submit proposals concerning the mediation program in light of the First Circuit decision and in particular the issue of limits on time and costs. See e.g. *In re Atl. Pipe Corp.*, 304 F.3d 135 (1st Cir. 2002). Defendants shall file their submission one week after this Court issues its ruling on the injunction and the Plaintiffs shall file their submission one week after the Defendants' filing.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "John J. McConnell, Jr.", with a stylized flourish at the end.

John J. McConnell, Jr.  
United States District Judge

Date: June 19, 2013

# EXHIBIT B

**Full docket text:**

TEXT ORDER: The deadlines for the submission of briefs that were contained in the [2163] Order are extended. Plaintiffs' briefs on the injunction are due 6/27/13 and defendants' responses are due 7/5/13. Defendants' briefs on standing are due on 6/27/13 and plaintiffs' responses are due on 7/5/13. In addition the hearing scheduled for Monday, 7/8/13 has been rescheduled to Wednesday, 7/10/13 at 2:00 p.m. - So Ordered by Judge John J. McConnell, Jr. on 6/26/13. (Barletta, Barbara)

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Description:	History/Documents	Search Criteria:	1:11-mc-00088-M-LDA
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